IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8253 OF 2004

Mrs.Safiabi Idris .. Petitioner.
Vs.
Mohammed Umar Haji
Ismail & Others .. Respondents.

Mr.V.R.Tripathi for the petitioner.
Mr.A.S.Naik for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 27TH OCTOBER, 2004

P.C.:

. Heard Mr.Tripathi, learned counsel for the petitioner and Mr.Naik, learned counsel for the respondents.

2. This petition is directed against the order dated 28.9.2004 passed by the City Civil Court, by which the petitioner's application dated 28.9.2004, seeking leave to lead further evidence by allowing her husband to step into witness box on her behalf was rejected. Her husband is a constituted attorney of the petitioner - plaintiff no.2. The application was rejected on the ground that initially the plaintiffs chose to examine plaintiff no.1 only who deposed for himself and on behalf of

plaintiff no.2. After the examination of plaintiff no.1 got over the plaintiffs closed their evidence. Thereafter defendant no.1 made a statement before the court that he did not wish to lead any evidence. The matter was, therefore, adjourned for arguments to 28.9.2004. On that day the application was filed seeking permission to examine plaintiff no.1. Mr.Tripathi, learned counsel for the petitioner submitted that the court has wide powers under section 151 of Civil Procedure Code to grant such application and allow plaintiff no.2 to step into witness box in the interest of justice. On the other hand Mr.Naik, learned counsel for the respondents submitted that the jurisdiction under section 151 of Civil Procedure Code cannot be exericsed to fill in the lacuna in the evidence and that too in a case where the defendant chose not to lead evidence in view of the evidence of the plaintiff or his witness, which according to the defendant, give certain admissions supporting his case. In any case, according to Mr.Naik, the jurisdiction under section 151 cannot be exercised for allowing the party to fill in the lacuna in the evidence having initially chosen not to examine himself in the case.

3. Under the terms of section 151, no party has right to insist on the court to exercise its inherent jurisdiction. This jurisdiction is to be exercised by the court in very exceptional circumstances. This power is not intended to enable the court to confer a right upon the party. In the present case plaintiff no.2 chose not to examine herself. Plaintiff No.1 was examined and he deposed on behalf of plaintiff no.2 also. The application seeking permission to allow plaintiff no.2 to lead evidence was not filed immediately after examination of plaintiff no.1 was completed but it was filed after the learned counsel appering for the defendant made a statement that the defendant did not wish to lead any evidence, more particularly in view of evidence of P.W.1. The power under section 151 cannot be exercised to confer a right upon the party to fill in the lacuna or to reopen the evidence. To my mind, the court below has rightly declined to exercise jurisdiction under section 151 of Civil Procedure Code for the reasons recorded in the impugned order. I see no reason to exercise extremely limited jurisdiction under Article 227 of the Constitution. The petition, therefore, fails and is dismissed as such.

(D.B.Bhosale, J.)